

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Walker, et al.
Appl. No.: 10/729,439
Filed: December 5, 2003
Conf. No.: 2150
Title: GAMING DEVICE AND METHOD OF OPERATION THEREOF
Art Unit: 3714
Examiner: Mark Alan Sager
Docket No.: 3718582-00305

Mail Stop OFFICE OF PETITIONS / OPLA

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)**

Sir:

Applicant hereby petitions for reconsideration of the Patent Term Adjustment accorded the above-referenced application at time of allowance. The *Notice of Allowance and Determination of Patent Term Adjustment* under 35 U.S.C. 154(b), mailed June 8, 2010, states that the Total PTA is 877 days. That is, USPTO Delay days are 938, and Applicant Delay days are 61. The Applicant Delay days of 61 appear to be understated, resulting in the Total PTA (days) being longer than appropriate.

Applicant respectfully requests a review of the prosecution file history with attention to the March 17, 2009 mailing of the *Final Rejection*, the September 28, 2009 mailing of the *Notice of Abandonment for Failure to Response to Office Action*, and the subsequent October 23, 2009 filing of a *Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) (PTO/SB/64)*, with a *Request for Continued Examination (RCE)*.

STATEMENT OF FACTS

The PAIR "Transaction History" correctly reflects:

03-17-2009 – Mailed Final Rejection (PTOL-326);

09-28-2009 – Mailed Notice of Abandonment for Failure to Respond;

10-23-2009 – Petition Entered (*for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) (PTO/SB/64)*); and

10-23-2009 – Request for RCE

Conversely, the PAIR "Patent Term Adjustment History" appears to incorrectly reflect that there are no Applicant Delay days for the above-mentioned unintentional abandonment, *Petition to Revive*, and delayed *Response/RCE*. Further, while the Applicant proposed reply (RCE) required for the consideration of a petition to revive met the requirements under 37 CFR 1.114, no extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application was the day after the three-month statutory reply period of June 17, 2009, that is, June 18, 2009. Therefore, while unintentional, it is suggested the prosecution of the present application should include an additional Applicant delay period from the date of abandonment, June 18, 2009, to the date of the filing of the *Petition for Revival*, October 23, 2009, as the petition satisfied the requirements of 37 CFR 1.137(b) in that Applicant supplied (1) the reply in the form of a *Request for Continued Examination (RCE)*, including the fee and the submission required by 37 CFR 1.114, (2) the petition fee, and (3) a proper statement of unintentional delay.

REMARKS

In consideration of the events described above, Applicant believes the Total PTA calculation of 877 days is overstated as of the allowance date. Applicant also defers to the Office for expertise and guidance is assessing unintentional abandonment and revival after the *Final Rejection* mailed March 17, 2009. In awaiting a defined ruling, Applicant respectfully requests reconsideration of the patent term adjustment in the following manner.

- 1) USPTO Delay: 938 days – correct as stated;
- 2) APPL Delays days be corrected to reflect a reduction beginning on the first day after the three-month response due date for the *Final Rejection of March 17, 2009*, which is **June 18, 2009**, to, and including the *Petition for Revival* and RCE receipt date of **October 23, 2009**, increasing the Applicant Delay by 128 days, from 61 to 189 days;
- 3) Total PTA days be decreased from 938 to 749 days (938 minus 189).

Pursuant to 37 CFR § 1.18(e), the fee of \$200 is submitted herewith. To the extent that any additional fees are due and owing for this Petition, the Commissioner is hereby authorized to charge them to Deposit Account, 02-1818.

Thank you for your consideration.

Respectfully submitted,

K&L Gates LLP

BY



Adam H. Masia
Reg. No. 35,602
Customer No. 29159

Dated: August 24, 2010